

**Proposed Amendments to the Local Rules
to become effective
December 1, 2010**

1. Proposed amendment to Local Rule 7.4.

***Explanation:** The proposed amendment to Local Rule 7.4 makes it clear that briefing schedules under the Local Rules apply to summary judgment motions. The time computation rules changes to the Federal Rules of Civil Procedure and to our local rules, as amended effective December 1, 2009, made it unclear as to which rules govern the deadlines, Fed. R. Civ. P. 56(c)(1) or LR 7.5, 7.6 and 7.7. Fed. R. Civ. P. 56(c)(1), as amended effective 12/1/09, provides that “unless a different time is set by local rule or the court orders otherwise. . . a party opposing the motion must file a response within 21 days after the motion is served.” LR 7.6 provides, “Any party opposing any motion shall file a brief in opposition, together with any opposing affidavits, transcripts or other documents, within fourteen (14) days after service of the movant’s brief, or, if a brief in support of the motion is not required under these rules, within seven (7) days after service of the motion.” Middle District of PA judges’ practice continues to be to enforce the LR 7.5, 7.6 and 7.7 deadlines as to all motions including summary judgment motions. However LR 56.1, since it is numbered to correspond to Fed. R. Civ. P. 56 and is referred to by a practitioner in opposing a summary judgment motion, by its omission of any deadline provisions may mislead a practitioner into believing the new Fed. R. Civ. P. summary judgment deadlines are applicable. The fact that the new Fed. R. Civ. P. 56(c)(1) now attaches a deadline clock to the “response” in combination with the fact that our local rules do not use the word “response” in our construction of the summary judgment process leads to the potential for a misunderstanding of our requirements. The proposed amendment to Local Rule 7.4 provides clarification regarding the applicability of briefing schedules to summary judgment motions.*

LR 7.4 Motions for Summary Judgment

For local rule regarding the filing of a motion for summary judgment, see LR 56.1. Briefing schedules under Local Rules 7.5, 7.6 and 7.7 are applicable to any brief filed in connection with a motion for summary judgment.

(edited version)

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2. Proposed amendment to Local Rule 7.10.

***Explanation:** The proposed amendment to Local Rule 7.10 addresses a concern that the time computation rules changes effective December 1, 2009 created a potential conflict between F. R. Civ. P. 59(e) and Local Rule 7.10. Rule 59(e) now contains a twenty-eight (28) day time period in which to file a motion to alter or amend a judgment. Before the time computation amendments became effective December 1, Local Rule 7.10 and Rule 59(e) both provided for a ten (10) day period. The concern would involve the case where a party would file a motion seeking to amend a judgment more than fourteen (14) days after and less than twenty-eight (28) days after entry of the judgment. If the motion were titled a “motion for reconsideration” and were filed more than fourteen (14) days after the order, opposing counsel might seek to strike the motion as untimely, citing LR 7.10. The amendment to Local Rule 7.10, provides clarification in the rule.*

LR 7.10 Motions for Reconsideration.

Any motion for reconsideration or reargument must be accompanied by a supporting brief and filed within fourteen (14) days after the entry of the order concerned. **This rule is not applicable to a motion to alter or amend a judgment under Fed. R. Civ. P. 59.**

(edited version)

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3. Proposed amendment to Local Rule 16.2.

***Explanation:** The proposed amendment to Local Rule 16.2 addresses a concern regarding the requirement under Local Rule 16.2 which requires that each case management conference be attended by at least one attorney with “complete authority to settle the case”. This requirement presents a problem for the government because, ultimately, any settlement will need to be embodied in a formal Consent Decree approved and signed by the Assistant Attorney General and lodged with the Court for public comment. The proposed revisions address this concern, simplifies the rule and more closely aligns the rule with practice in the Middle District.*

LR 16.2 Court Conferences, Participants at.

~~At least one attorney for each of the parties who is a member of the bar of this court shall appear at and participate in each conference, except in the case of attorneys admitted to practice in such case under Local Rule 83.8.2.1, .2, .3, or .4. (a) At least one attorney for each of the parties who is fully familiar with the case and who has complete~~

~~authority to settle the case shall appear for each~~ **be present to represent the interests of the party at the initial case management conference.** ~~If any attorney does not have complete settlement authority, the party or a person with full settlement authority shall accompany the attorney to each conference and trial, or upon approval of court, be available by telephone during each conference and trial.~~ **(b) Lead counsel for each party shall be present to represent the interests of the party at the final pretrial conference. Each party or a person with full settlement authority for the party shall attend the final pretrial conference, unless otherwise approved by the court. Upon approval of the court the party or person with full settlement authority may be available by telephone.** Parties may be required to participate at any conference at the discretion of the court. If settlement requires approval of a committee of an insurance carrier, all of the members of such committee, or a majority thereof, if such majority is empowered to act, shall be reasonably available by telephone. Counsel must notify the person, or committee with settlement authority, of the requirements of this rule, as well as the dates of each conference and trial.

(edited version)

LR 16.2 Court Conferences, Participants at.

(a) At least one attorney for each of the parties shall be present to represent the interests of the party at the initial case management conference.

(b) Lead counsel for each party shall be present to represent the interests of the party at the final pretrial conference. Each party or a person with full settlement authority for the party shall attend the final pretrial conference, unless otherwise approved by the court. Upon approval of the court the party or person with full settlement authority may be available by telephone. Parties may be required to participate at any conference at the discretion of the court. If settlement requires approval of a committee of an insurance carrier, all of the members of such committee, or a majority thereof, if such majority is empowered to act, shall be reasonably available by telephone. Counsel must notify the person, or committee with settlement authority, of the requirements of this rule, as well as the dates of each conference and trial.

4. *Proposed amendment to Local Rule 67.1.*

Explanation: Existing language in Local Rule 67.1 regarding the investment of Registry Funds Pending Litigation is impractical to comply with and generally inconsistent with investment practice. The amendments serve two purposes: (1) reflect the court's long standing local practice of deferring registry investment mechanics to the clerk, (2) address by rule, rather than individual investment orders, Fed. R. Civ. P. 67(b) requirement that the court approve the interest bearing instruments being used for investment.

LR 67.1 Investment of Registry Funds Pending Litigation.

(a) Funds regularly deposited in the registry of the court such as bail, removal bonds and civil garnishments are placed in the Treasury of the United States and accrue no

interest.

(b) Counsel or parties who wish to deposit funds in pending litigation may, by leave of court, have such funds invested in interest bearing accounts, ~~certificates of deposit or treasury bills~~. Any order directing investment will include the following: ~~(1) The amount to be invested;~~ The order may, if counsel so stipulate, describe the specifics of the investment mechanism. Otherwise, the clerk shall deposit the funds with a commercial financial institution approved by the U.S. Treasury as meeting the requirements of 31 CFR part 202 in a passbook, certificate of deposit, money market deposit account, U.S. Treasury securities, or the Court Registry Investment System administered by the United States District Court for the Southern District of Texas ~~(2) The name of the bank or financial institution at a location where the clerk has an office in which the funds are to be invested;~~ ~~(3) The type of account or instrument in which the funds are to be invested;~~ ~~(4) The terms of investment to include reinvestment instructions on short term instruments, any time limits on investment and other material information required by a particular case.~~

(c) Counsel or parties obtaining an order as described in paragraph (b) of this rule shall cause a copy to be served personally upon the clerk or the chief deputy and the financial deputy at the district office or on the deputy in charge at a division office.

(d) The clerk shall take all reasonable steps to deposit funds at interest within, but not more than, fourteen (14) days after having been served with a copy of the order.

(e) Counsel or parties will have the responsibility, fourteen (14) days after service of the order as provided by paragraph (c) of this rule, to verify with the clerk that the funds have been invested as ordered.

(f) Failure to personally serve as specified in paragraph (c) above, or failure to verify that the funds were actually invested as provided by part (e) of this rule shall release the clerk and deputy clerks from any liability for the loss of interest which could have been earned on the funds.

(g) A service fee shall be charged by the clerk for the investment of registry funds in accordance with the fee schedule prescribed by the Judicial Conference pursuant to 28 U.S.C. § 1914, except as otherwise provided by law.

(edited version)

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(e) Counsel or parties will have the responsibility, fourteen (14) days after service of the order as provided by paragraph (c) of this rule, to verify with the clerk that the funds have been invested as ordered.

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5. *Proposed amendment to Local Rule 83.2.2.*

***Explanation:** The proposed amendment to Local Rule 83.2.2 resolves a conflict with 28 U.S.C § 517. Local Rule 83.2.2, as currently drafted, requires that an attorney be a member of the bar of any United States District Court in order to be granted special admission to practice in the Middle District of PA. 28 U.S.C § 517 permits an officer of the Department of Justice, dispatched by the Attorney General, to represent the interest of the government without a requirement for that officer to be a member of the bar of any United States District Court. The proposed amendment eliminates the requirement for a Department of Justice attorney to be a member of a U.S. District Court, but still provides a requirement that the attorney be a member in good standing of the bar of the highest court of any state, territory, or the District of Columbia.*

LR 83.8.2.2 Attorneys for the United States.

An attorney who is a member **in good standing** of the bar of ~~any United States District Court, who is a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice~~ **the highest court of any state, territory, or the District of Columbia**, and who is not subject to pending disciplinary proceedings in any jurisdiction ~~may, shall be permitted to represent in this court the United States, an agency of the United States, or an officer of the United States when that officer is a party in the officer's official capacity.~~

LR 83.8.2.2 Attorneys for the United States.

An attorney who is a member in good standing of the bar of the highest court of any state, territory, or the District of Columbia, and who is not subject to pending disciplinary proceedings in any jurisdiction may, represent in this court the United States, an agency of the United States, or an officer of the United States when that officer is a party in the officer's official capacity.

6. Proposed amendments to Local Rules 16.8.1 and 83.5.

***Explanation:** On September 15, 2009, the Judicial Conference approved proposed Guidelines for Distinguishing between Matters Appropriate for Standing Orders and Matters Appropriate for Local Rules and for Posting Standing Orders on a Court's Website. Consequently, Standing Orders have been reviewed for compliance with the guidelines and the following amendments to LR 16.8.1 and LR 83.5 have been proposed to make practitioners and the public aware that court policies exist on the respective subjects.*

LR 16.8.1 General Rule

The court adopts this rule for the purpose of implementing a court-annexed mediation program to provide litigants with an alternative method to dispose of their case. As hereinafter provided, commencing January 1, 1994 (and continuing until further action by the court) each judicial officer of this court may refer civil actions to mediation. Cases may be subject to mandatory mediation under the Mandatory Mediation Program of the court as set forth in the Standing Orders of Court, which can be found on the court's website @ www.pamd.uscourts.gov

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LR 83.5 Courthouse and Courtroom Security

Matters of policy relating to courthouse and courtroom security and the use of electronic devices are addressed in Standing Orders of Court, which can be found on the court's website @ www.pamd.uscourts.gov

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